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OFFICE OF PETITIONS

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|---------------------------------------|---|----------|
| In re Application of | : | |
| Faris, et al. | : | |
| Application No. 09/809,638 | : | DECISION |
| Filing Date: 14 March, 2001 | : | |
| Attorney Docket No.: G&C 129.35-US-01 | : | |

This is a decision on one of two separate petitions filed on 15 March, 2006, under 37 C.F.R. §1.183, and also appropriately considered under 37 C.F.R. §1.131.

For the reasons set forth below, the petition under 37 C.F.R. §1.183 is **DISMISSED**, and the petition as considered under 37 C.F.R. §1.131 is **DISMISSED** because the petition under 37 C.F.R. §1.183 is dismissed.

There appears to be no indication that Petitioner herein was ever empowered to prosecute the instant application. If Petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

NOTES:

- (1) Any petition (and fee) for reconsideration of this decision must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled “Renewed Petition under 37 C.F.R. §1.47.”
- (2) Thereafter, there will be no further reconsideration of this matter.

BACKGROUND

The record reflects that:

- the instant application was filed in March 2001, and through prosecution Petitioner sought to provide support to overcome a rejection by the Examiner by use of a declaration under 37 C.F.R. §1.131—however, Petitioner, who, as noted above, does not appear to be of record in this matter, seeks to accomplish this task in the face of the alleged failure of co-inventor Steven Chappell Mitchell’s (Mr. Mitchell) failure to join in the declaration;
- there is no indication if or when Mr. Mitchell left the employ of the assignee, or as to the diligence of the search undertaken to ensure that the representation by Petitioner to the Office as to the proper/accurate/current/reasonably-stated-as-the-last-known residence for Mr. Mitchell.

ANALYSIS

Having failed to file a properly executed declaration, Petitioner contends that the Office should waive under 37 C.F.R. §1.183¹ the Rules of Practice without an adequate showing of diligence as to ascertaining the proper/accurate/current/reasonably-stated-as-the-last-known residence for the absent co-inventor.

While the instant petition is not filed under 37 C.F.R. §1.47, that provision of the Rules of Practice certainly suggest guidelines for addressing the matter of a non-signing inventor—including concerns as to ensuring the proper representation to the Office of diligence as to determining a proper/accurate/current/reasonably-stated-as-the-last-known residence for the

¹ The regulations at 37 C.F.R. §1.183 provide, in pertinent part:
§1.183 Suspension of the Rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. * * *

absent co-inventor. proper/accurate/current/reasonably-stated-as-the-last-known residence for the absent co-inventor. (There was not even an indication that any attempt was made to contact the individual by telephone to ensure that an address is current.)

Petitioner's failure to act in compliance with statute(s) and regulation(s) creates no "extraordinary situation" requiring the invocation of the interests of justice.

The Office, where it has the power to do so, should not relax the requirements of established practice in order to save an applicant from the consequence of his delay.²

Thus, Petitioner seeks a waiver pursuant to 37 C.F.R. §1.183³ that is at this writing neither justified nor permitted.

Accordingly, the petition under 37 C.F.R. §1.183 is **dismissed**.

Accordingly, Petitioner has made no satisfactory showing in support of a petition under 37 C.F.R. §1.47; and the petition as considered under 37 C.F.R. §1.131 is **dismissed**.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 P.O. Box 1450
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 ATTN.: Office of Petitions

² See, Ex Parte Sassin, 1906 Dec. Comm'r. Pat. 205, 206 (Comm'r Pat. 1906) and compare Ziegler v. Baxter v. Natta, 159 USPQ 378, 379 (Comm'r Pat. 1968) and Williams v. The Five Platters, Inc., 510 F.2d 963, 184 USPQ 744 (CCPA 1975). Thus, there is no adequate showing of "an extraordinary situation" in which "justice requires" suspension of the time period set forth in 37 C.F.R. 1.193(b). See, Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (circumstances are not extraordinary, and do not require waiver of the rules, when a party makes an avoidable mistake in filing papers). Circumstances resulting from petitioner's failure to exercise due care, or lack of knowledge of or failure to properly apply the patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the granting of relief. See, In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990); In re Bird & Son, Inc., 195 USPQ 586, 588 (Comm'r Pats. 1977).

³ Delay resulting from the inadvertence or mistake of Petitioner does not warrant equitable tolling of the time period of 37 C.F.R. §1.193(b). Equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable, due care and diligence. U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983); Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Even assuming *arguendo*, that clerical inadvertence or error caused or contributed to the delay in filing the Reply Brief, such is not a ground for requesting waiver of the regulations. See In re Kabushiki Kaisha Hitachi Seisakusho, 39 USPQ2d 1319, 1320 (Comm'r Pat. 1994).

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Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.



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